

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DAWN DOOLEY,

Plaintiff,

vs.

COLIN BOONE, Individually and in
his Official Capacity as a Police
Officer for the City of Des Moines,
Iowa, CHRIS LATCHAM, Individually
and in his Official Capacity as a
Police Officer for the City of Des
Moines, Iowa, CITY OF DES
MOINES, IOWA,
Defendants.

Case No. LACL 120985

PETITION AT LAW

(Jury Demand)

CLERK DISTRICT COURT
IOWA DISTRICT COURT
FILED
FEB 21 2011
DES MOINES, IOWA

COMES NOW, the Plaintiff, Dawn Dooley, by and through her undersigned
counsel and for her causes of action states to the Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Dawn Dooley is a United States citizen and was a resident of Des Moines, Polk County, Iowa at all times material to the events complained of herein.
2. Defendant Colin Boone is believed to be a citizen and resident of the State of Iowa and at all times relevant to the events complained of herein, was a police officer employed by the City of Des Moines, Iowa.
3. Defendant Chris Latcham is believed to be a citizen and resident of the State of Iowa and at all times relevant to the events complained of herein, was a police officer employed by the City of Des Moines, Iowa.
4. Defendant City of Des Moines (hereinafter "Defendant City") is a municipal corporation organized and authorized to operate under the laws of Iowa, and is located

at 400 East First Street, Des Moines, Polk County, Iowa. Defendant City is responsible for maintaining and operating the Des Moines Police Department.

5. At all times relevant to the events complained of herein, the individual defendants were acting within the scope of their employment or duties as police officers for the Des Moines Police Department.

6. Subject matter jurisdiction of the District Court is proper pursuant to Iowa Code § 602.6101.

7. To initiate this action, venue is proper in the District Court for Polk County, Iowa pursuant to Iowa Code § 616.18.

FACTUAL BACKGROUND

8. All events complained of herein occurred in the City of Des Moines, Polk County, Iowa.

9. On or about January 14, 2009, the Des Moines Police Department stopped Plaintiff's vehicle after observing her "fishtailing" and "spin out in a cloud of snow." After making contact with Plaintiff, the initial officer noted an "odor of alcohol coming from [Plaintiff]." Further, Plaintiff "admitted to drinking." At that time, the initial officer radioed for a traffic unit to investigate this roadside stop.

10. Defendant Boone was subsequently tripped to assist in the traffic stop. Upon arrival, Defendant Boone received information suggesting Plaintiff was intoxicated.

11. After conducting a brief, initial conversation with Plaintiff, Defendant Boone conducted field sobriety tests. Plaintiff complied during the administration of all field sobriety testing.

12. At the conclusion of field sobriety testing, Defendant Boone placed Plaintiff under arrest for operating a motor vehicle while intoxicated.

13. While arresting and detaining Plaintiff for operating while intoxicated, Defendant Boone fractured Plaintiff's arm and otherwise used excessive force when handling Plaintiff.

14. After returning to the Des Moines Police Department, Defendants Boone and Latcham quietly conversed about Defendant Boone's use of force. Defendant Boone notified Defendant Latcham that Boone "had to use force on her." Defendant Boone then expressed some concern to Defendant Latcham that "they" are watching our videotapes.

15. Within seconds, Defendant Boone inquired with another officer about whether the recording equipment had been turned on. Defendant Boone learned that the officer had not turned on the recording equipment.

16. Minutes later, Defendant Boone inquired with Defendant Latcham about whether he will be able to "witness my force?" Defendant Boone then stated something to the following effect: "I'll just put that she tried to resist, and you grabbed her right arm, and she dropped down...". Defendant Boone concluded his suggested version of events by stating that, "[Plaintiff] tried to kick you several times, and you calmed her down and put her in your car."

17. Defendant Latcham responded by stating that Defendant Boone should include that Plaintiff was putting her coat on – which Defendant Latcham demonstrated for Defendant Boone while he offered his suggestion.

18. After Defendant Latcham's proposal, Defendant Boone dismissed this suggestion and reiterated that he was going to state that Plaintiff dropped down after being grabbed and handcuffed.

19. Defendant Boone subsequently authored a police report which reads, "[t]he suspect began to resist and while being handcuffed dropped her weight and put pressure on her arms and shoulder."

CAUSES OF ACTION

COUNT I

CIVIL RIGHTS VIOLATION PURSUANT TO 42 U.S.C § 1983
VIOLATION OF FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(Against Defendant Boone)

20. Plaintiff repleads paragraphs one (1) through nineteen (19) as if fully set forth herein.

21. Defendant Boone is a person for the purposes of a Section 1983 action for damages.

22. At all times material hereto, Defendant's actions and/or omissions were made under the color of authority as a law enforcement officer for the City of Des Moines Police Department.

23. On or about November 14, 2009, Defendant Boone violated Plaintiff's constitutional rights by utilizing excessive force when Defendant Boone grabbed Plaintiff and fractured her arm without justification while Plaintiff was in Defendant Boone's control. This use of force was unnecessary under the circumstances.

24. Defendant Boone violated Plaintiff's Fourth Amendment Right under the United States Constitution to be free from unreasonable seizures.

25. The use of force Defendant Boone employed while handling Plaintiff was excessive and unreasonable under the circumstances.

26. Plaintiff posed no credible or articulable threat of harm to the safety of Defendant Boone or any other law enforcement officer during the roadside stop, while being transported to the Des Moines Police Department, or at the Des Moines Police Department.

27. Defendant demonstrated a deliberate indifference to and/or reckless disregard of Plaintiff's civil and constitutional rights by maliciously and sadistically manhandling Plaintiff while interacting with Plaintiff during the aforementioned investigative process.

28. Defendant Boone's actions were willful, wanton, unlawful, and in gross disregard of the civil rights of the Plaintiff, justifying an award of punitive damages.

29. As a direct and proximate result of said Defendant Boone's illegal and unjustified conduct, Plaintiff is believed to have suffered in the past and will in the future suffer and incur the following damages:

- a. Deprivation of her constitutional rights;
- b. Consequential damages;
- c. Actual and Compensatory Damages including, but not limited to past, present, and future pain and suffering and medical expenses; and
- d. Other damages as allowed by law.

WHEREFORE, Plaintiff prays for Judgment against the aforementioned Defendant as follows:

- a. Actual, Compensatory, Consequential, and all other allowable damages against Defendant in an amount as yet to be determined;
- b. Plaintiff's cost in this action, including reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988;
- c. Punitive damages and,
- d. Such relief as the Court deems just and equitable.

COUNT II
VIOLATION OF 42 U.S.C. SECTIONS 1983, 1985, and 1986
CONSPIRACY
(Against Defendants Boone and Latcham)

30. Plaintiff repleads paragraphs one (1) through paragraphs twenty-nine (29) as if fully set forth herein.

31. Defendants Boone and Latcham engaged in a civil conspiracy against Plaintiff whereby Defendants conspired to intentionally conceal Defendant Boone's use of unreasonable and excessive force which resulted in fracturing Plaintiff's arm.

32. The intent of the conspiracy was to deprive Plaintiff, either directly or indirectly, of her civil rights.

33. As stated more thoroughly, *supra*, Defendants Boone and Latcham engaged in conversations and reenactments demonstrating a conspiracy to conceal Defendant Boone's use of force on Plaintiff. Defendants reached an understanding to deny Plaintiff of her constitutional rights.

34. The words and actions of these defendants constitute overt acts and were said and done in furtherance of a conspiracy which resulted in depriving Plaintiff of her constitutional rights including, but not limited to, her right to be free from unreasonable seizures, her right to equal protection under the law, and her right to due process of law.

35. Defendant Latcham had the ability to prevent the conspiracy proposed by Defendant Boone and refused to do so.

36. Plaintiff suffered damages as a result of the aforementioned conspiracy.

37. As a direct and proximate result of the individual Defendants' illegal and unconstitutional conduct, the Plaintiff has in the past and will in the future suffer and incur the following damages:

- a. Deprivation of his constitutional rights;
- b. Humiliation, degradation, public ridicule, loss of personal reputation, and emotional distress;
- c. Actual, compensatory, and consequential damages and other damages as allowed by law.

38. The actions of the individual Defendants were willful, wanton, unlawful, and in gross disregard for the federally protected rights of the Plaintiff, justifying an award of punitive damages.

WHEREFORE, Plaintiff prays for Judgment against Defendants as follows:

- a. Compensatory damages against the individual Defendants in an amount as yet to be determined;
- b. Punitive damages against the individual Defendants in an amount sufficient to punish Defendants and deter them and others from similar conduct in the future.
- c. Plaintiff's costs in this action, including reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and,
- d. Such other relief as the Court deems equitable.

COUNT III
ASSAULT AND BATTERY
(Against Defendant Boone)

39. Plaintiff repleads paragraphs one (1) through thirty-eight (38) as if fully set forth herein.

40. Defendant Boone utilized unnecessary and excessive force while attempting to detain, arrest, and/or restrain the freedom of Plaintiff by fracturing Plaintiff's arm. The actions of Defendant were undertaken without the consent of Plaintiff.

41. Defendant Boone's contact was offensive to Plaintiff and/or a reasonable person and caused physical injury to Plaintiff. Said contact further placed Plaintiff in fear of further physical pain and/or injury.

42. Defendant's use of force against the Plaintiff was clearly excessive and unreasonable under the circumstances, constituting assault and battery.

43. As a proximate result of Defendant's acts and omissions, the Plaintiff has in the past and will in the future suffer injuries and damages.

44. Defendant's actions were willful, wanton, unlawful, and in gross disregard of the civil rights of the Plaintiff, justifying an award of punitive damages.

WHEREFORE, the Plaintiff respectfully requests judgment against Defendant in an amount which will fully and fairly compensate him for his injuries and damages, including but not limited to compensatory and punitive damages, for attorney fees, for interest and costs as allowed by law, and such other relief as may be just under the circumstances.

COUNT
RESPONDEAT SUPERIOR
(Against City of Des Moines, Iowa)

45. Plaintiff repleads paragraphs one (1) through forty-four (44) as if fully set forth herein.

46. At all times material hereto, an employer-employee relationship existed between Defendant City of Des Moines, Iowa, as the employer, and Defendants Boone and Latcham as the employees.

47. At all times material hereto, Defendants were acting within the scope of their employment with Defendant City of Des Moines, Iowa.

48. Under the doctrine of *respondeat superior*, Defendant City of Des Moines, Iowa is liable for the aforementioned conduct and/or omissions of the individual Defendants.

49. As a result of the conduct and/or omissions of Defendants, Plaintiff sustained damages and injuries as previously set forth in this Petition.

WHEREFORE, Plaintiff, Dawn Dooley, demand judgment against Defendant City of Des Moines, Iowa in an amount representing full and fair compensation for the injuries and damages set forth above, for such attorneys' fees, interest, and costs as allowed by law, and for such other relief as may be just under the circumstances.

JURY DEMAND

Plaintiff hereby demands a trial by jury in this matter on all counts to which Plaintiff is entitled to a jury.

**PARRISH KRUIDENIER DUNN BOLES
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Original filed.